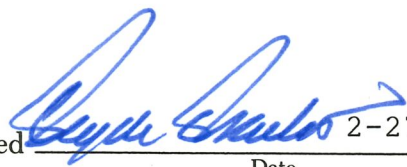


Approved

 2-27-90  
Date

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions

The meeting was called to order by Representative Clyde D. Graeber at  
Chairperson

3:30 ~~am~~/p.m. on February 20, 1990 in room 527-S of the Capitol.

All members were present except: Representatives Cates, Schauf and Wilbert, Excused

Committee staff present: Bill Wolff, Research Department  
Bruce Kinzie, Revisor of Statutes  
June Evans, Secretary

Conferees appearing before the committee: Stephen A. English, Arkansas City, Kansas  
Grant Brooks, Kansas Banking Department

The Chairman called the meeting to order and opened hearings on four bills.

House Bill No. 2989, An Act relating to banks and banking; concerning dividends; amending K.S.A. 1989 Supp. 9-910 and repealing the existing section.

There was no discussion, and Representative Francisco moved and Representative Eckert seconded that HB 2989 be moved out of Committee favorably. The motion carried.

Final Action was taken on HB 2995, An Act relating to banks and banking; concerning records of the State Bank Commissioner; amending K.S.A. 1989 Supp. 9-1712 and repealing the existing section. There was no discussion and Representative Green moved and Representative Dillon seconded that HB 2995 be moved out of committee favorably. The motion carried.

Grant Brooks, Legal Counsel, Kansas Banking Department, had a proposed amendment to HB 2991, deleting Section 3 and replacing it with, "This Act shall take effect and be in force from and after its publication in the Kansas register." (See Attachment #1).

Representative Hamm moved and Representative Francisco seconded that HB 2991 be moved out of Committee as amended. The motion carried.

Grant Brooks, Legal Counsel, Kansas Banking Department, proposed an amendment to HB 2993. (See Attachment #2)

The amendment would change the word "compiles" in Line 25 to "generates" and change subparagraphs (c) and (d) and make paragraphs (d) (e) and (e) (f). There was discussion.

Representative King moved to move HB 2993 out of committee as amended. The bill failed as it did not receive a second to the motion.

Representative Teagarden moved and Representative Shallenburger seconded a substitute motion to table HB 2993. The substitute motion carried and HB 2993 was tabled.

The Chairman opened the hearings on HB 2988.

Steve English, Arkansas City, Kansas, gave testimony and offered an amendment to HB 2988. After discussion it was decided there was a better vehicle for this amendment than in HB 2988. Staff suggested SB 447 would be a better place for this amendment. (See Attachment #3).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions  
room 527-S Statehouse, at 3:30 ~~xm~~/p.m. on February 20, 1990.

Representative Francisco suggested the Appropriations Committee could introduce the Amendment as a Committee Bill.

The Chairman stated the Amendment should either be added to SB 447 or introduced as a separate bill as this is a new approach rather than a clean-up.

Representative Green moved and Representative King seconded to hold this Amendment until SB 447 is brought before the Committee for a hearing. The motion carried.

Ron Todd, Assistant Insurance Commissioner, stated the Insurance Department had no objections to this legislation in regard the insurance law.

The hearing was closed on HB 2988.

Representative Francisco requested that the Kansas Banking Department furnish written testimony in the future.

The hearing was opened on HB 2990, An Act relating to banks and banking; concerning unlawful transactions; amending K.S.A. 1989 Supp, 9-1112 and repealing the existing section.

The Banking Commission offered an Amendment. (See Atch #4).

There was discussion and the hearing was closed on HB 2990.

Representative King moved and Representative Green seconded the minutes of the February 15, 1990 meeting.

The meeting adjourned at 5:00 P.M.

Date: Feb 20, 1990

GUEST REGISTER  
HOUSE  
COMMERCIAL AND FINANCIAL INSTITUTIONS

NAME	ORGANIZATION	ADDRESS
Stephen English	Citizen	304 Warren Way Arkansas City, Ks 67005
Janel Wright	KCUW	Topeka, Ks
Ron Todd	Ins. Dept.	" "
Jeff Sennick	KNLSI	TOPEKA
Sun Mar	KRA	"
W. Newton Male	KANSAS BANKING DEPT.	"

Testimony

Before

The House Committee on Commercial  
and Financial Institutions

by Conferee:

Grant L.C. Brooks, General Counsel

Kansas Banking Department

**House Bill 2988**

This bill amends K.S.A. 9-1102 which concerns bank ownership of real estate and certain corporate stock.

K.S.A. 9-1102 prohibits a bank from owning stock in a trust company outside the city where the bank is located.

Prior to the change in the trust company statutes, the restrictions were to prohibit a state bank from expanding its deposit taking ability through owning deposit taking trust companies state wide. Thus, indirect statewide branching for state banks.

However, since trust companies can no longer take deposits the restriction has lost its purpose and now stands as an impediment against expansion. It makes no sense to now geographically limit a bank's ownership in a trust company.

This bill deletes the geographical limitations on a bank owning stock in a trust company.

Additionally, this bill expands and clarifies when a bank can own stock in a corporation organized to hold real estate. K.S.A. 9-1102 required the real estate corporation to own the land occupied by the bank before the bank could own any stock in the real estate corporation.

The amendments expand the authority by allowing a bank to own stock in the corporation which owns real estate that shall be occupied by the bank. The proposed language is less restrictive because it clarifies that the bank need not occupy all of the land the real estate corporation owns.

Atch #1

**House Bill 2989**

This bill amends K.S.A. 9-910 which provides limitations on when a bank may declare dividends. The statute requires a bank to recognize depreciation for the purpose of calculating undivided profits from which dividends are taken.

This language never anticipated bond depreciation in a bank's investment portfolio. Although the bonds will be held to their maturity, if valued at market rate, substantial depreciation could exist in the bond portfolio and prohibit a bank from declaring dividends because the recognized depreciation would consume all of the undivided profits.

The amendment deletes that language and substitutes language that requires the bank to declare dividends in accordance with Generally Accepted Accounting Principles.

**House Bill 2990**

This bill amends K.S.A. 9-1112 which concerns unlawful transactions. The amendments are basically language clarification and cleanup. The same authority and restrictions exist. The language is modernized to allow for a simpler reading.

One change was made. The condition of a commercially reasonable sale was added to the requirement that a bank must dispose of property which was acquired in the collection of debts.

If such a sale is not possible, then the Commissioner, as presently empowered, can authorize the bank to carry such property as a book asset for a longer period.

**House Bill 2991**

This bill amends K.S.A. 9-1801 which concerns the organization of banks and the issuance of emergency charters.

Subsection (b) of this statute allows the State Bank Commissioner, in emergency situations, to approve new bank charters upon the dissolution or insolvency of any bank or trust company.

There now is a need to broaden the authority of the Commissioner to allow investors/successful bidders on savings associations, receivership, to apply for an emergency bank charter.

Under the Financial Institution Reform, Recovery and Enforcement Act of 1989, (FIRREA), state banks can bid on savings associations and operate them as branches. However, a holding company cannot create an additional new state bank because the Commissioner does not have the power to issue an emergency charter upon the insolvency of a savings association. Conversely, the Office of the Comptroller of the Currency (OCC) does have the power to issue emergency national bank charters for a successor to any financial institution.

The amendments would add language to allow the State Bank Commissioner to issue emergency state bank charters on an equal basis as the national bank regulatory (OCC) can offer national bank charters.

**House Bill 2992**

This bill amends K.S.A. 9-1104 which concerns lending limits.

This bill is basically corrective.

Last year this statute was amended to exclude limited partners from the lending limit calculations for limited partnerships. However, the language used to exclude limited partners was inadvertently left out of the subsections 3 and 5.

Additionally, the bill amends the applicability of subsection (b): the lending limit to bank officers and employees. It provides that the exemptions that apply to other loans also apply to loans to bank officers and employees. For example, this would allow a bank officer to exceed the 5 percent limitation on loans secured by a C.D. and loans guaranteed by federal agencies and all the other exemptions contained in subsection (a) of 9-1104.

**House Bill 2993**

This bill amends K.S.A. 9-1712 which governs the confidentiality of information procured by the State Bank Commissioner.

The present statute does not adequately describe what confidential information is, who owns it and when can it be released. Also, the present statute, prohibits the Commissioner from disclosing information but does not prevent the state bank from disclosing reports of examination. The statute mandates information is confidential, but provides no penalty for those who violate its provisions.

The amendments correct all these deficiencies. The new language provides that all confidential information is the property of the state of Kansas and cannot be subject to disclosure, except upon the Commissioner's approval. The amendments also define information to be all inclusive. The proposed language makes it a class C misdemeanor for those who violate this statute.

**House Bill 2994**

This bill amends K.S.A. 9-511 which concerns the licensing requirements for the transmission of money.

The Transmission of Money Act (K.S.A. 9-508 to 513) regulates all entities that engage in the business of transmitting money: usually by money order or wire service.

The act requires before any person starts a money order business, they must have a net worth of at least \$100,000 and file a surety bond of a minimum of \$50,000 with the Bank Commissioner.

The logic being if a money order company goes bankrupt, at least the Commissioner will have a surety bond to cover a majority, if not all, of the money orders issued in Kansas.

It is amazing to realize that 25 percent of all United States' households do not have checking accounts. Instead, a majority of them rely on money order companies to pay bills and for their savings. Unfortunately, the majority of money order users are low income households; the one who can least afford to lose money if the money order company becomes insolvent, and all the outstanding orders become worthless.

K.S.A. 9-511 exempts certain institutions from the surety bond and net worth requirements. This statute exempts financial institutions: banks, savings associations and credit unions, and also telegraph companies that wire money from one agent to another, for you to pick up.

There is only one telegraph company, Western Union, that is operating under this exemption. Western Union has approximately, 196 agents in Kansas engaged in "telegraphing money."

Western Union is basically insolvent. (See, The Wall Street Journal, October 13, 1989). They had an operating loss of \$15 to \$20 million dollars last year. Western Union moves approximately \$3 billion dollars a year through its money transfer network. It takes about 15 minutes to 2 hours for a wire transfer.

If Western Union went bankrupt, there would be Kansas citizens that would have money in transit that would be lost because there is no bond posted to cover the money transfers.

Therefore, this bill deletes the telegraph exemption from the licensing requirements and will require all telegraph companies to post a bond as security for the wire transfers.

#### **House Bill 2995**

This bill amends K.S.A. 9-1602 which allows the State Bank Commissioner discretion in granting trust authority to a bank. This statute has no provision for the revocation of trust authority.

The amendments give the State Bank Commissioner the authority to revoke a bank's permit to operate a trust department only upon finding the bank is failing to adhere to sound fiduciary practices. The proposed language provides any bank, subject to revocation, the right to a hearing pursuant to the Kansas Administrative Procedures Act.



# HOUSE BILL No. 2993

By Committee on Commercial and Financial Institutions

2-13

ATCH # 2

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AN ACT relating to banks and banking; concerning records of the state bank commissioner; amending K.S.A. 1989 Supp. 9-1712 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 1989 Supp. 9-1712 is hereby amended to read as follows: 9-1712. All information which the commissioner shall gather or record in making an investigation and examination of any bank or trust company shall be confidential information, and shall not be disclosed by the commissioner or any assistant, or examiner, or employee thereof, except to the attorney general when in the opinion of the commissioner the same should be disclosed, and except as otherwise provided in this act. No original report or document in the possession of the department may be removed from the office of the banking department, except as provided by K.S.A. 9-1301 *et seq.* and amendments thereto. (a) All information the state bank commissioner ~~compiles or procures~~ in making an investigation or examination of a state bank or trust company shall be confidential information.

generates

(b) All confidential information shall be the property of the state of Kansas and shall not be subject to disclosure except upon the written approval of the state bank commissioner.

~~(c) No original document may be removed from the office of the state bank commissioner, except as provided by K.S.A. 9-1301 et seq., and amendments thereto.~~

(c) The Commissioner shall give ten days prior written notice of intent to disclose confidential information to the affected bank or trust company; except, this shall not apply to reports filed pursuant to K.S.A. 9-2014 and amendments thereto.

ℓ (k) As used in this section, "information" means, but is not limited to, all documents, oral and written communication and all electronic data.

(d) Any bank or trust company, receiving notice as provided in subsection (c), may object to the disclosure of the confidential information and shall be afforded the right to a hearing in accordance with the provisions of the Kansas Administrative Procedure Act.

ℓ (k) Any person who violates this section, upon conviction, shall be guilty of a class C misdemeanor.

Sec. 2. K.S.A. 1989 Supp. 9-1712 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

TESTIMONY OF STEPHEN A. ENGLISH  
IN SUPPORT OF ADDITIONAL AMENDMENTS TO  
HOUSE BILL 2988

My name is Stephen A. English. My address is 304 Warren Way, Arkansas City, Kansas. I am presently in the process of forming a non-depository trust company to be located in Wichita, Kansas. For the last 20 years I have been involved in trust work in the capacity as a national bank examiner, and trust officer with two banks located in Kansas.

Last year, Substitute for House Bill Number 2004 was adopted by the Kansas Legislature. This bill amended or repealed more than 80 separate statutes. Last year's bill authorized the establishment of non-depository trust companies. In other words, trust companies can be formed that are not affiliated with a particular banking or financial institution. This bill was intended to give independent trust companies the same fiduciary powers that bank trust departments have traditionally had. Trust companies are required to have the same type of capital structure as bank trust departments and are regulated by the Kansas Banking Commissioner's office just like state chartered bank trust departments.

In other words, the bill passed last year was intended to put the new non-depository trust companies on the same level playing field as trust departments owned by commercial banks. In order to accomplish this purpose, numerous statutes were reviewed by the bank

commissioner's office, the sponsor of last year's Substitute for House Bill Number 2004. Representatives of the financial community, such as myself, as well as members of the state bank commissioner's office and insurance commissioner's office have reviewed the provisions of House Bill No. 2004 with other statutes that pertain to trust powers of commercial banks. It appears that in order to clarify the role of Kansas trust companies, and to maintain the "level playing field", two minor additional statutory changes are suggested pertaining to trust companies when serving as collateral custodians for insurance companies or municipalities in the state of Kansas.

Trust companies by their very nature are specialists in exercising fiduciary powers on behalf of individuals, corporations, and municipalities. For example, if an individual or corporation retains us to manage their investment portfolio, we are held to very high standards of accountability for monitoring the performance of their investments and accounting to our clients for all income received and disbursements. Trust companies are required by statute to handle their clients' affairs in exactly the same manner as commercial bank trust departments.

When a trust company or commercial bank trust department serves as a collateral custodian for securities of an insurance company or municipality, it will be required by law to assure that the securities owned by the insurance company or pledged by a commercial

bank as security for deposits of municipalities in that bank are maintained at adequate levels as required by statute.

We are asking this committee to consider amending House Bill 2988 to make minor revisions to K.S.A. 9-2103(j) and K.S.A. 9-1405(b).

The proposed amendment to K.S.A. 9-2103(j) will specifically provide that a non-depository trust company may perform any act as a fiduciary which any Kansas state bank may perform under any provision of the banking, insurance, or any other laws of the state of Kansas. This change, recommended by the Kansas Insurance Commissioner's Department, will clarify that trust companies will have the same fiduciary powers that trust departments have in serving as collateral custodians for securities owned by insurance companies. Thus, non-depository trust companies will now be assured of an equal footing as bank trust departments as was originally intended by Substitute for House Bill 2004 passed last year.

Our amendment to K.S.A. 9-1405(b) merely provides that non-depository trust companies, as well as Kansas state or national banks may serve as custodian for bonds and securities pledged to municipalities. This change represents a technical correction to Section 44 of last year's Substitute for House Bill Number 2004 where the reference to "trust company" was inadvertently deleted. Again, the inclusion of trust companies in this statute will assure us of a level playing field when compared to the powers of trust

departments owned by state or national banks.

I have personally visited with representatives of the Kansas Bank Commissioner's office, the Kansas Insurance Commissioner's office, and the Kansas Bankers Association to develop the language for our suggested amendment to these two statutes for inclusion in your proposed House Bill 2988.

Thank you for giving me the opportunity to present my testimony this afternoon. I will be happy to answer any questions you may have.

HOUSE BILL No. 2990

By Committee on Commercial and Financial Institutions

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AN ACT relating to banks and banking; concerning unlawful transactions; amending K.S.A. 1989 Supp. 9-1112 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1989 Supp. 9-1112 is hereby amended to read as follows: 9-1112. Except as specifically authorized, no bank shall use its moneys, directly or indirectly by buying and selling tangible property as a business. No bank shall invest any of its funds in the stock of any other bank or corporation, except as provided in this act. No bank shall purchase any instrument, contract, security or other asset from any of its executive or managing officers or employees or from the bank's parent company or a subsidiary of the bank's parent company, except upon approval of the commissioner. No bank shall sell or give any of its assets to any executive or managing officer or employee or to the bank's parent company or a subsidiary of the bank's parent company, except upon approval of the commissioner. Approval of the commissioner need not be obtained for an assignment of third-party loans and security for the payment thereof to or from a subsidiary of the bank's parent company.

No bank shall make any loan or discount on the security of its own shares of stock, or the shares of stock of the bank's parent company or subsidiary of the bank's parent company, nor acquire any of such shares unless the same is necessary to prevent loss upon a debt previously contracted in good faith, in which event such stock must be disposed of within six months at public or private sale. After the expiration of six months no such stock shall be carried as a book asset. Any bank may hold and sell any kind of property coming into its ownership in the collection of debts, but such property which is not a legal investment for banks shall be disposed of as soon as possible. No personal property so acquired, except legal investments, shall be carried as a book asset after the expiration of six months from the date it is acquired unless the commis-

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sioner shall authorize a bank to carry such property as a book asset for a longer period of time. (a) No bank shall buy, sell or trade tangible property as a business or invest in the stock of another bank or corporation, except as specifically authorized.

(b) No bank shall sell, give or purchase any instrument, contract, security or other asset to or from any employee or from the bank's parent company or a subsidiary of the bank's parent company without prior approval of the commissioner. Approval of the commissioner need not be obtained for an assignment of third party loans and security for the payment thereof to or from a subsidiary of the bank's parent company.

(c) No bank shall acquire or make a loan on its own shares of stock, or the stock of the bank's parent company or a subsidiary of the bank's parent company, except as provided in subsection (d).

(d) A bank may hold or sell any property coming into its ownership in the collection of debts. All such property except legal investments, shall be sold within six months of acquisition, provided a commercially reasonable sale can occur.

~~(e) If a commercially reasonable sale cannot occur within six months, the bank shall not carry such property as a book asset except that the commissioner may authorize a bank to carry such property as a book asset for a longer period.~~

Sec. 2. K.S.A. 1989 Supp. 9-1112 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

The bank shall not carry such property as a book asset, after the expiration of six months from the date it is acquired, unless authorized by the Commissioner to carry such property as a book asset for a longer period.

Att. 4

Attch #4